

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

WSOU INVESTMENTS LLC                   \*       September 29, 2021  
   \*  
VS.   \*       CIVIL ACTION NOS.  
   \*       W-20-CV-571, 572, 573, 575, 576,  
GOOGLE LLC                               \*       579, 580, 583, 584, 585

BEFORE THE HONORABLE ALAN D ALBRIGHT  
TELEPHONIC SCHEDULING CONFERENCE

APPEARANCES:

For the Plaintiff:                   James L. Etheridge, Esq.  
   Travis Lee Richins, Esq.  
   Etheridge Law Group, PLLC  
   2600 E. Southlake Blvd., Suite 120-324  
   Southlake, TX 76092

Mark D. Siegmund, Esq.  
Law Firm of Walt Fair, PLLC  
1508 N. Valley Mills Drive  
Waco, TX 76710

For the Defendant:               Tharan Gregory Lanier, Esq.  
   Jones Day  
   1755 Embarcadero Road  
   Palo Alto, CA 94303

Tracy A. Stitt, Esq.  
Jones Day  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001-2113

Jennifer A. Kash, Esq.  
Warren Lex LLP  
2261 Market Street, No. 606  
San Francisco, CA 94114

Michael E. Jones, Esq.  
Patrick C. Clutter, Esq.  
Potter Minton PC  
110 N College, Suite 500  
Tyler, TX 75702

1 Court Reporter: Kristie M. Davis, CRR, RMR  
2 PO Box 20994  
3 Waco, Texas 76702-0994  
4 (254) 340-6114

5 Proceedings recorded by mechanical stenography, transcript  
6 produced by computer-aided transcription.  
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1 (September 29, 2021, 2:32 p.m.)

2 DEPUTY CLERK: Discovery hearing in Civil Actions  
3 W-20-CV-571, 572, 573, 575, 576, 579, 580, 583, 584 and 585,  
4 styled WSOU Investments LLC versus Google LLC.

5 THE COURT: If I could have announcements from counsel  
6 starting with plaintiff. Mr. Siegmund?

7 MR. SIEGMUND: Good afternoon, Your Honor. This is Mark  
8 Siegmund for plaintiff WSOU Investments LLC. With me this  
9 afternoon are my colleagues Jim Etheridge and Travis Richins  
10 from the Etheridge Law Group, and Mr. Etheridge will be the  
11 main speaker today, Your Honor.

12 THE COURT: Okey dokey. And for defendant?

13 MR. CLUTTER: Good afternoon, Your Honor. This is Patrick  
14 Clutter with Potter Minton on behalf of Google LLC. Also on  
15 the line for Google are Greg Lanier, Tracy Stitt and Edwin  
16 Garcia of Jones Day and Jen Kash of Warren Lex. We're ready to  
17 proceed.

18 THE COURT: Okay. Very good. We'll start off with -- I  
19 think the issue -- if it's broader than this, let me know, but  
20 I think the issue about whether or not material can leave the  
21 territorial boundaries of the United States has to do with the  
22 fact that plaintiff has one or more experts in Canada. I'll --  
23 Mr. Siegmund or whoever, plaintiffs -- if you can just confirm  
24 that that is essentially what we're fussing over. If it's more  
25 than that, let me know so I can -- so we can get to it.

1 MR. ETHERIDGE: Good afternoon, Judge. Yes. That is  
2 correct. Dr. Cooperstock lives in Montreal and he is our  
3 expert on three of these cases, and Dr. Cooperstock is a  
4 professor at the university there. He has appeared and done  
5 work in cases in the PTAB in the Southern District of  
6 California, Eastern District of Texas, Southern District of  
7 Texas, Western District of Texas, Massachusetts, Eastern  
8 District of New York, and he's reviewed Apple source code. So  
9 if we're not going to change the protective order, we at least  
10 need to make an exception around him.

11 THE COURT: Okay. And let me hear from the folks for  
12 Google as to why there's a problem with this -- the reason I  
13 set this for a hearing, I certainly understood the issue. I  
14 don't understand why there is a concern on this being -- going  
15 to a specific witness in Canada, but if Google has one, I'm  
16 happy to hear what that is.

17 MR. LANIER: Thank you, Your Honor. My partner Tracy  
18 Stitt will address that.

19 THE COURT: Okay. Yes, ma'am.

20 MR. STITT: Thank you, Your Honor. May it please the  
21 Court.

22 Google's concern with the (inaudible) and sensitive  
23 information that it's disclosed in this matter leaving the U.S.  
24 is it's pretty straightforward. It's actually beyond just  
25 going to a particular individual. There's actually twofold

1 concerns here. The first is with respect to even disclosure to  
2 an authorized individual such as Dr. Cooperstock, once he and  
3 the information leave the U.S., they're beyond the Court's  
4 jurisdiction, and that's the case even if he has agreed to sign  
5 an undertaking and agreed to be bound by the protective order,  
6 because the reality is there's no --

7 (Clarification by the reporter.)

8 MR. STITT: The point that I was making was that even if  
9 Dr. Cooperstock has agreed to sign an undertaking and be bound  
10 by the protective order, once he leaves the jurisdiction of the  
11 U.S. and takes the information with him outside the U.S., the  
12 reality is there isn't a mechanism to enforce the PO, number  
13 one, and the second --

14 THE COURT: I have the power to take actions against the  
15 plaintiff, and so it seems to me that the plaintiff's counsel  
16 and plaintiff are, you know, kind of putting their head in the  
17 Lion's mouth here in that regard, willingly doing that, and I  
18 get it that -- you know, if he's in -- I don't know what --  
19 frankly, I don't know what I could do to him if he was in  
20 Minnesota. I mean, I don't -- if he's in Minnesota and he does  
21 something bad, I don't know that -- I mean, he would violate  
22 the protective order, but it would be a civil remedy. I mean,  
23 at any rate, I'm not sure -- I'm not sure I get -- what I care  
24 about you saying is if there's something particular about it  
25 going to Canada, as long as the gentleman -- I think what I

1 heard counsel from plaintiff tell me is they can live with it  
2 being limited to this one expert as the only person who's going  
3 to be across the territorial boundaries of the United States,  
4 and if he signs the undertaking and the plaintiff knows that  
5 they're responsible for any misconduct on his part, not that  
6 there will be any, but -- misconduct or just negligence, I  
7 guess, would be the same thing, that they're responsible. I'm  
8 not sure that I have any greater concern with the fact that  
9 he's in Canada than other places. But -- and you said you had  
10 two reasons. So I'm happy to hear the other one.

11 MR. STITT: Yes, Your Honor. If I may respond briefly.

12 And first of all, with respect to him being in other  
13 places in the U.S., I think that there would be some mechanism  
14 for you to enforce, whether it be via Rule 45 or some way to  
15 enforce even against him as long as he's in the U.S.

16 The second concern that we have --

17 THE COURT: Well, what would I -- so -- and I mean this.  
18 You know, I tried to think of this. Let's say he's in  
19 Minnesota and he -- I don't know what he would do wrong with  
20 it. So -- but something happens that Google's unhappy about.  
21 What sanctions could I enforce against this person other --  
22 that I -- I mean, I can enforce all kinds of unhappy things on  
23 the plaintiff for it, but what could I do to the expert?

24 MR. STITT: If he was in Minnesota, we would have a  
25 mechanism to file an action there or some sort of subpoena

1 there and have it removed to you. I think -- I'm not -- in  
2 terms of the specifics, I don't know the exact, but there would  
3 be a mechanism more likely there --

4 THE COURT: I get there's a mechanism. I get there's a  
5 mechanism. But I don't get -- I don't understand what the  
6 mechanism gets you is what I'm saying. Is -- a mechanism to  
7 get me to do what?

8 MR. STITT: Well, two things. If he's in the U.S. and the  
9 information is still in the U.S., then we may be able to remedy  
10 any of these inadvertent disclosures and keep the problem to a  
11 minimum.

12 The second concern that I was going to raise with the fact  
13 that this would be leaving the U.S. and going to Canada outside  
14 the jurisdiction of the U.S. relates to potential disclosures  
15 or risks or threats that it would be susceptible to by virtue  
16 of the fact that it is leaving the U.S. and that there are  
17 other --

18 THE COURT: I don't -- I guess hypothetically I  
19 understand, but tell me what -- why is there a greater danger?  
20 I mean, they're going to be sending it over the Internet,  
21 right? I mean, and so -- or they're going to be delivering a  
22 laptop or doing something. What is the greater danger that  
23 he's in Canada than there is that he's in Minnesota? I'm not  
24 following that.

25 MR. STITT: Sure, Your Honor. And by being in Canada and

1 by having the information outside the jurisdiction of the U.S.,  
2 if there were to be, for an example, government action or  
3 another investigation under Canadian law to get this  
4 information from him, that would be outside the jurisdiction of  
5 your Court and you would not be able to control or enforce  
6 anything with respect to disclosures that would happen --

7 THE COURT: Okay. I get that's a great hypothetical. Do  
8 you have any example where that's ever happened? Where the  
9 Canadian government has come in and said to a person who's an  
10 expert for an American company, we want to seize something that  
11 is protected by a protective order from a United States federal  
12 Court?

13 MR. STITT: I don't have an example from Canada. I do  
14 know of an example from the United Kingdom where there was an  
15 investigation from the government to get some information from  
16 a case.

17 THE COURT: And, again, that's really why I had this  
18 hearing was I'm unaware of any time we need to be afraid of  
19 something happening in Canada. So I'm going to allow --  
20 you-all work out the safest means of getting it to this expert  
21 in Canada. I don't know if that's -- I don't know what that  
22 means. I don't know if it's delivery by laptop or -- that's,  
23 you know, encrypted. I don't know what that is, but you-all  
24 have done this a thousand times. But I'm going to allow this  
25 one expert to be -- to come within the protective order. I



1 don't think Google's articulated a really concrete concern that  
2 would prevent that.

3 The next issue has to do with Section 10(o), and I'm happy  
4 to hear first from plaintiff why you want your proposal and  
5 then from defendant as to the merit of theirs.

6 MR. ETHERIDGE: I believe those are the provisions about  
7 the hand carry.

8 THE COURT: How it may be transported. Yes.

9 MR. ETHERIDGE: Right. Okay. So in all my years of  
10 litigating, I've never seen this clause anywhere that the  
11 printouts have to be hand carried. And the practical aspect of  
12 that is, look. We know from other cases our code review guys  
13 are on site four days a week for maybe 20 weeks, the constantly  
14 asking for code to be printed out. They get the code and they  
15 take it back to their offices and they're able to review it.  
16 Here in order to get that to our experts, which includes  
17 Dr. Cooperstock in Montreal, we've got an expert in Baltimore  
18 and we got a couple experts in San Francisco, this would have  
19 to be hand carried to them. And what the fight was about  
20 earlier was whether or not you could send it by FedEx. We know  
21 that firearms are sent by FedEx, pharmaceuticals -- Class 1  
22 pharmaceuticals are sent by FedEx. So I don't understand the  
23 reason for the extra layer and costs associated with having to  
24 use the hand carry and the delay.

25 Now, Mr. Lanier and I talked this morning and he did make

1 an interesting proposal, which was they would eat that cost and  
2 they would still meet the two day deadline, the two day  
3 business deadline on getting the documents to us. But I'm not  
4 sure that that completely covers everything because what  
5 happens in a deposition, when you finish a deposition and you  
6 have documents that need to be moved, how --

7 THE COURT: Mr. Etheridge, let me ask you this.

8 MR. ETHERIDGE: Okay.

9 THE COURT: If I were to require Google to pay for and be  
10 responsible for this hand deliver transmission so that they  
11 could be protected but it was entirely at their cost and they  
12 could do it within hours as relatively quickly as FedEx could  
13 do it, what would your concern be? If I put all the burden on  
14 you, what -- I don't know exactly what it is y'all are worried  
15 about, but Person A, where everything is, puts it in a sealed  
16 envelope, some security person that Google has hired and is  
17 paying for can deliver it to wherever it -- to Person B as  
18 quickly as FedEx could get it there, and that way it is, in  
19 essence, hand delivered. What would the problem be with that?

20 MR. ETHERIDGE: Well, I guess I would caution the Court,  
21 but you can take whatever caution you want. Obviously you're  
22 the judge. That's not in your default and that's not in the  
23 default in the Eastern District of Texas, and that's not  
24 anywhere. The default always is or FedEx or other courier  
25 service.

1 THE COURT: Mr. Etheridge, I'm trying to come up with a  
2 solution here.

3 MR. ETHERIDGE: Okay. I mean, if they're paying for it  
4 and every time information needs to be moved around, they  
5 agree --

6 THE COURT: Whatever you could say -- any time unlimited  
7 if your person would be using FedEx, and I go with Google here,  
8 Google would be required to pick it up at their cost, deliver  
9 it at their cost and deliver it as quickly as FedEx however  
10 many times that need be, how is the plaintiff prejudiced at  
11 all?

12 MR. ETHERIDGE: That seems fine as long as it actually  
13 happens.

14 THE COURT: Well, I'm -- you know --

15 MR. ETHERIDGE: Right.

16 THE COURT: That worries me a little bit that you would  
17 say that because if I order it, I'm -- you know, I'm not --  
18 it's not going to be a suggestion if I tell Google that's their  
19 option. I know Mr. Lanier pretty well and others, and I have  
20 little -- I don't -- if Mr. Lanier said in the opposite  
21 direction that's fine as long as, you know, Mr. Etheridge  
22 actually lives up to what you tell him to do, you know, I'm  
23 very copacetic that everyone on here is going to do what I tell  
24 them to do. It would shock me to the bones for Mr. Lanier and  
25 his team to -- unless something dramatically went wrong for him

1 not to comply with what I suggested.

2 So let me turn to -- I'm not sure if it's Ms. Stitt or  
3 Mr. Lanier who's handling this or maybe someone else, but that  
4 is my -- if Google doesn't want to do it the way the plaintiff  
5 is suggesting, I provided an alternative. So you can pick  
6 either of those that you want.

7 MR. LANIER: Thank you, Your Honor. It's Greg Lanier.  
8 May I first ask logically can you-all hear me? Because my  
9 picture has disappeared. I apologize.

10 THE COURT: We can see and hear you.

11 MR. LANIER: Well, okay. I hope I -- I can't see you. So  
12 I will try to read the room without being able to see it.

13 THE COURT: And I see you used the props of the guitars in  
14 the background to subliminally impress me.

15 MR. LANIER: There you go.

16 THE COURT: Mr. Siegmund appears to have some -- I think  
17 probably some stuff from his either military service or his sad  
18 years at Texas A&M in the background. So, you know, what's  
19 good for the goose is good for the gander.

20 MR. LANIER: Understood, Your Honor. Of course.

21 You know, we had proposed exactly what Your Honor's  
22 ordered as a comprise here, and obviously if that's Your  
23 Honor's guidance, we'll do it. Just to be crystal clear, we  
24 will meet the deadlines of the protective order by hand carry  
25 at Google's expense.

1 THE COURT: And whatever FedEx can do, y'all just need to  
2 do that and we'll be fine.

3 MR. LANIER: Thank you, Your Honor.

4 THE COURT: The last issue is Section 10(a) which has to  
5 do with standalone computers may only be located in Austin,  
6 Texas. Tell me -- let me hear from Google as to what Google  
7 wants and then I'll get back to Mr. Etheridge.

8 MR. LANIER: Thank you, Your Honor. Again, Greg Lanier on  
9 this issue. We thought Your Honor's order was -- enforcing  
10 Your Honor's OGP in the default protective order made good  
11 sense, and we've had the source code available on computers in  
12 our Dallas office for some time now. Mindful of the Court's  
13 clear guidance to try to work this issue out, we made a  
14 proposal this morning to WSOU. We have not yet heard back, but  
15 our proposal was that we would make the source code -- the  
16 computers available in Austin at a location, probably a local  
17 law firm, that Google was comfortable working with on two  
18 conditions. The first was that WSOU be responsible for the  
19 expenses particular to being in Austin and, second, that  
20 because the fact of the moving of the source code from Dallas  
21 where it has been to Austin wouldn't be used by WSOU as a  
22 grounds to seek delay in or change in the schedule of the case.

23 Now, just to be clear on that point, the reason we made  
24 that a condition of our proposal was because the source code  
25 has been in our Dallas office since May of this year. So we

1 didn't want to be told --

2 THE COURT: I got it.

3 MR. LANIER: Okay. Thank you, Your Honor. I'll stop  
4 there then.

5 THE COURT: Mr. Etheridge?

6 MR. ETHERIDGE: Okay. So two points on that. One is I'm  
7 glad to see that we can have the code in Austin. I know you're  
8 familiar with the Federal Circuit and their mandamus on Sonos  
9 and they pointed out that the inquiry focus should be on the  
10 costs and inconvenience of requiring people to travel to a  
11 distant forum to be away from their homes and families for an  
12 extended period. So that's why we wanted it in Austin. All  
13 our -- we always thought it would be in Austin. We've  
14 litigated with Google before for years. It's always --

15 THE COURT: Just jump ahead and tell me what you think  
16 of --

17 MR. ETHERIDGE: So two things. I'd like some  
18 clarification on when they say the costs associated with it  
19 being in Austin. I'm not sure what all that encompasses. If  
20 it's some reasonable rental of an office in a law firm, I guess  
21 as long as that's reasonable, that's okay. I'm a little bit  
22 concerned if what we end up with is having to pay for two  
23 associates that sit outside the door eight hours a day and bill  
24 us.

25 THE COURT: Well, here's what we're going to do. When

1 Google sends you the bill, if you think it's unreasonable and  
2 you can't persuade Google that it's unreasonable, come back to  
3 me, and I have a pretty good idea of what I think is  
4 reasonable.

5 So -- and, number two, with regard to no additional time  
6 or delay, Mr. Etheridge hasn't asked for one, and so if Mr.  
7 Etheridge -- I'm not -- he's not prohibited -- WSOU is not  
8 prohibited down the road from saying they might need more time,  
9 but I'll deal with that if and when the plaintiff decides that  
10 they might need more time. So I think we've worked everything  
11 out.

12 Is there -- I'll start with Mr. Lanier just because you're  
13 in my screen. Is there anything else we needed to take up with  
14 Google?

15 MR. LANIER: We don't have anything else to raise today,  
16 Your Honor. Thank you.

17 THE COURT: And Mr. Etheridge?

18 MR. ETHERIDGE: I have nothing else, Your Honor. Thank  
19 you.

20 THE COURT: Okay. Thank you-all for getting on the phone  
21 so quickly and getting this worked out with us. If you need  
22 anything else, this is Jeffrey's case, so just let him know and  
23 we'll jump back on.

24 Have a good day.

25 (Hearing adjourned at 2:50 p.m.)

1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
3

4 I, Kristie M. Davis, Official Court Reporter for the  
5 United States District Court, Western District of Texas, do  
6 certify that the foregoing is a correct transcript from the  
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with  
9 those prescribed by the Court and Judicial Conference of the  
10 United States.

11 Certified to by me this 3rd day of October 2021.

12  
13 /s/ Kristie M. Davis  
14 KRISTIE M. DAVIS  
15 Official Court Reporter  
16 800 Franklin Avenue  
17 Waco, Texas 76701  
18 (254) 340-6114  
19 kmdaviscsr@yahoo.com  
20  
21  
22  
23  
24  
25